

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
MICHAEL WAYNE ARNOLD,)	
Plaintiff,)	
)	
v.)	C.A. No. 15-80-S
)	
A.T. WALL, et al.,)	
Defendants.)	
_____)	

ORDER

WILLIAM E. SMITH, United States District Judge.

On March 2, 2015, Plaintiff Michael Wayne Arnold, pro se, filed a civil rights Complaint (ECF No. 1) against A.T. Wall, Director of the Rhode Island Department of Corrections, Prison Guard Gass, Warden Jankowski, Inspector Wells, "John Doe in Army Pants," "John Doe Head of Medical," and "John Doe in Charge of Isolation Cells." Arnold also filed an Application to Proceed without Prepayment of Fees and Affidavit (ECF No. 2).¹ A summary of subsequent events follows.

After screening the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, the Court ordered Arnold to file an Amended Complaint, which he did on April 13, 2015 (ECF No. 4).² He included

¹ On May 15, 2015, the Application to proceed in forma pauperis was denied as moot after Arnold paid the filing fee.

² At the same time, Arnold filed a Motion to Appoint Counsel (ECF No. 5). The motion was denied without prejudice in a

three summonses, none of which was addressed to a specific Defendant. Nonetheless, they were issued on June 10, 2015.

Arnold filed a Second Amended Complaint (ECF No. 14) on July 31, 2015.³ However, he failed to include any summonses with that document.

On September 25, 2015, Arnold filed a Supplemental Complaint (ECF No. 17).⁴ He attached one summons. In a letter dated September 28, 2015 (ECF No. 15), the Court explained to Arnold that the summons was not issued because it had not been properly completed. The Court included with the letter a blank summons, with instructions regarding completion, as well as information regarding how to properly effectuate service of process.

Arnold filed a Motion for Service of Process (ECF No. 22) on October 5, 2015. On October 21, 2015, the Court issued a

Memorandum and Order (ECF No. 7) dated May 6, 2015. On July 15, 2015, Arnold filed a Notice of Appeal (ECF No. 12) of the denial. In a Judgment (ECF No. 27) entered November 2, 2015, the Court of Appeals for the First Circuit dismissed the appeal, noting both that an order by a magistrate judge is not a final order which can be reviewed directly by a court of appeals and that an order denying a motion for appointment of counsel is not immediately appealable to the court of appeals.

³ The Second Amended Complaint added a defendant, Warden Nelson Lefebvre.

⁴ The Supplemental Complaint was stricken by text order dated September 29, 2015, as Arnold had not sought permission from the Court to file it. A subsequent motion for leave to file a supplemental complaint (ECF No. 21) was denied.

Memorandum and Order (ECF No. 24) granting Arnold in forma pauperis status and ordering the U.S. Marshal Service to serve Defendants with copies of his first and second Amended Complaints. The Memorandum and Order was followed by a letter from the Court (ECF No. 26), which included Process Receipt and Return forms and summonses. The letter again informed Arnold how the forms should be completed and instructed him to return them to the Court when completed. The forms were not completed and returned to the Court as directed.

Seven months later, on May 31, 2016, the Court received a letter from Arnold (ECF No. 31), in which he apologized for the "long delay" and his "absence from the case," explained that the case was in the hands of an attorney for nine months, and stated that he did want to pursue the matter. On June 9, 2016, the Court issued a Show Cause Order (ECF No. 32), ordering Arnold to show cause, in writing, why the case should not be dismissed for lack of prosecution, namely failure to make service upon Defendants within ninety days after the filing of the Second Amended Complaint and issuance of summonses as required by Federal Rule of Civil Procedure 4(m). The Show Cause Order further stated that "[i]f no good cause is shown the above-referenced matter will be dismissed without prejudice." (Id.)

The Court received Arnold's response (ECF No. 33) to the Show Cause Order five days later. Arnold again stated that an attorney had had the case files for nine months and had just returned them to Arnold, saying that he did not want the case. Arnold also stated that he was trying to get another attorney because he had no legal education or knowledge. Arnold subsequently sent the Court a letter (ECF No. 34) informing the Court that he still had no attorney.

The Court finds that Arnold has not shown good cause for his failure to serve Defendants within ninety days of the filing of the Second Amended Complaint and issuance of summonses as required by Fed. R. Civ. P. 4(m).⁵ Accordingly, as forewarned in the Show Cause Order, the action is DISMISSED without prejudice.

IT IS SO ORDERED.



William E. Smith
Chief Judge
Date: August 26, 2016

⁵ As of the date of this Order, Defendants still have not been served.